92-1611

No.:

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

IRENE S. ATRAQCHI and MIKE R. ATRAQCHI,

PETITIONERS

v.

UNKNOWN NAMED AGENTS OF THE
FEDERAL BUREAU OF INVESTIGATION, ET Al.

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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= =

QUESTIONS PRESENTED FOR REVIEW

1. Whether a pro se civil rights complaint which alleges facts amounting to a violation of 18 U.S.C.A. 2520 and the Fourth Amendment is susceptible to dismissal sua sponte for lack of subject matter jurisdiction under Fed. R. Civ. P. Rule 12(b)(6) and as frivolous in advance of service and when Court does not have benefit of the defendants' answer?

2. Whether a Motion For Automatic Substitution, FRAP 43(a,c) is susceptible to dismissal as moot when it is a procedural device and does not govern the question of mootness, and the Appellees did not respond; and the Appellants were not given the opportunity to charge the Parties and amend their complaint?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW. .	i
TABLE OF CONTENTS.	ii
TABLE OF AUTHORITIES.	iii
OPINION BELOW.	2
JURISDICTION.	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	3
STATEMENT OF THE CASE.	4
REASONS FOR GRANTING THE WRIT. . .	14
CONCLUSION.AND.RELIEF	27
APPENDIX A Opinion of the Court. of Appeals - No. 92-5238	A-1
APPENDIX B Opinion of the. . . . United States District Court For The District of Colombia - Civ. No. 92-1446	A-4
APPENDIX C Opinion of the Court. of Appeals - Denial of the Petition for Rehearing (issued March 17, 1993)	A-10
APPENDIX D Case Citations. . . .	A-12

TABLE OF AUTHORITIES

Pages

CASES

Bell v. Hood, 327 U.S. 678, 682-683 (1946). 20

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971). 17

Bracco v. Lackner, 462 F. Supp. 436, 441 n.2 (N.D. Cal. 1978). 25

Brower v. Inyo County, 489 U.S. 593 (1989). 18

Ciudadanos Unidos de San Juan v. Hidalgo County Grand Jury Commissioners, 622 F.2d 807, 820-22 & n. 26 (5th Cir. 1980). . . . 26

Conley v. Gibson, 355 U.S. 41, 45-46 (1957). 18,19

Crisafi v. Holland, 655 F.2d 1305, 1307-08 (D.C. Cir. 1981). 20,21 22,23

Estelle v. Gamble, 429 U.S. 97 (1976). 17,19

Hagans v. Lavine, 415 U.S. 528 534-543 (1974). 19,20

Haines v. Kerner, 404 U.S. 519, 520-21 (1972). 18,23

Jones v. Alfred Mayer Co., 392 U.S. 409 (1968). 17

Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982). 25

McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976). 17

Neitzke v. Williams, 490 U.S. 319, 328 (1989). . 15

Spomer v. Littleton, 414 U.S. 514 (1974). 26,27

Watson v. Ault, 525 F.2d 886 892 (5th Cir. 1976). 21

CONSTITUTION

United States Constitution

Fourth Amendment. i,3,4

STATUTES

18 U.S.C.A. 2520. . . . . i,3,4

28 U.S.C. 1254(1). 3

28 U.S.C. 1331. 4

28 U.S.C. 1343(3)(4). 4,19

28 U.S.C. 1915(d). 15,16,21

42 U.S.C. 1983. 4,16,17

42 U.S.C. 1985(1)(2)(3). . . 4

RULES

F.R.C.P. Rule 12(b)(1). . . . A-2

F.R.C.P. Rule 12(b)(6). . . . i,7 8,11,15,16,17

F.R.C.P. Rule 41(b). 7

F.R.C.P. Rule 60(b)(6). . . . 11

F.R.A.P. Rule 43(a,c). 24,25

OTHER

Federal Judicial Center, Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts 60 (January 1980). 22

C. Wright & A. Miller, Fed. Prac. & Pro. 1960 682-83 (1972). 25

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

IRENE S. ATRAQCHI and MIKE R. ATRAQCHI

Petitioners

v.

UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, JANET RENO, WILLIAM S. SESSIONS, MONTANA DEPARTMENT OF REVENUE, COUNTY OF YELLOWSTONE, VERN KLINGMAN, LEONARD DAHL, MUMTAZ FARGO, DENNIS PAXINOS, CHARLES MAXWELL, FIRST UNITED METHODIST CHURCH, PRINCIPAL FINANCIAL GROUP, FIREMAN'S FUND INSURANCE CO., MOUNTAIN BELL TELEPHONE CO., JANE DOE and JOHN DOE (1 thru 1000)

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Petitioners, Irene S. Atraqchi and Mike R. Atraqchi, pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit entered on December 28, 1992, which affirmed the order of the United States District Court for the District of Columbia.

OPINION BELOW

The opinion of the Court of Appeals is not officially reported. It is reproduced as Appendix A to this Petition. The written opinion of the District Court for the District of Columbia appears in Appendix B to this Petition.

BEST AVAI

JURISDICTION

The Court of Appeals' opinion in this matter was filed on December 28, 1992. A timely Petition for Rehearing was filed on January 8, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on March 17, 1993 and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure."

Statute 18 U.S.C.A. 2520:

> "Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept,

LABLE COPY

disclose, or use such communications."

STATEMENT OF THE CASE

The jurisdiction of the District Court is invoked under 28 U.S.C.A. 1343 (3) (4); U.S.C.A. Const. Amend 4; 28 U.S.C.S. 1331; 42 U.S.C. 1983; and 42 U.S.C. 1985 (1) (2) (3).

The jurisdiction of the District Court is further invoked pursuant to 18 U.S.C.S. 2520.

The Petitioners are informed and believe, and alleged in their complaint that Unknown Named Agents of the Federal Bureau of Investigation while acting under the color of law of the United States in the City of Washington, D.C. illegally wiretapped all their telephone conversations and bugged their car without warrant, probable cause, or consent.

The seized conversations and the

information gained were disseminated falsely, wantonly, and maliciously into a field of interception whereby heard by the "General Public" in violation of their Fourth Amendment right. The field of interception was instituted by the First United Methodist Church, Respondent, and other Christian denominations for the purpose of destroying the Atraqchis socially and economically, so as to force their conversion and that of their families.

Through this field of interception: the Petitioners have been located throughout the District of Columbia, all their conversations from telephone number (202) 337-3625 have been seized, and they were prevented from obtaining any employment in their field of expertise as Insurance Agent and Biologist until the present.

Upon arrival to the Washington, D.C. area on June 8, 1992 at about 10:00 A.M., Petitioners were located by means of illegal surveillance and the bugging of their car at Constitution Avenue and 15th St. They were approached by a white male, unknown to them, whom threatened them and told them to leave the Washington, D.C. area, to return to the State of Montana, that no one will employ them here, and that they will be physically harmed if they should decide to move and live in Washington.

Petitioners are informed and believe and allege on such information and belief that on June 14th, 1992 at about 9:30 A.M. and while Mike R. Atraqchi was a patient at Providence Hospital, Room number 835, Washington, D.C. that their telephone conversation about employment was intercepted from tele-

phone (202) 269-7835, seized, and disseminated which caused Petitioner, Irene Atraqchi, to be threatened with physical harm if she moved and worked in this area by an unknown woman to the Petitioner at the parking lot of said hospital.

On June 18, 1992 the Atraqchis immediately filed a federal civil suit in the United States District Court For The District of Columbia against Unknown Named Agents of the Federal Bureau of Investigation, et al. for illegal wiretapping which was dismissed sua sponte on June 24, 1992 for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. Rules 41(b) and 12(b)(6) and was affirmed by the United States Court of Appeals For The District of Columbia Circuit on December 28, 1992, and now pending before this Court. (See Appen-

dix D for citations).

The Petitioners litigated a similar matter of illegal wiretapping in the Federal Court in the State of Montana, Billings Division. The complaint, Cv-84-256BLG, was dismissed for failure to state a claim under Fed. R. Civ. P. Rule 12(b)(6) and was affirmed by the U.S. Court of Appeals For the Ninth Circuit, 791 F.2d 167 (1986), cert. denied, 479 U.S. 884 (1986).

Due to severe harassment Petitioners sought and were granted asylum in Sweden on February 27, 1987 only to be forced back five days later by the Unknown Named Agents of the Federal Bureau of Investigation.

In August, 1987 the Petitioners moved to vacate judgment for newly discovered evidence in the U.S. District Court, District of Montana for fraud,

incarceration, and murder of Petitioners' witnesses on or about July, 1986 upon the order of Respondents Unknown Named F.B.I. Agents, Dahl, Fargo, and Klingman to prevent them from testifying about the raping and prostituting of the Petitioners' two daughters. The motion was denied as untimely and was affirmed by the Ninth Circuit, 878 F.2d 1438 (1989). Due to extreme harassment, intimidation, threats, and isolation by the Respondents, the Atraqchis were unable to appeal it to the U.S. Supreme Court. (See Appendix D for citations).

On February 18, 1990 the Petitioners moved from the State of Montana to the State of Minnesota after a threat of arrest and death which was made upon them by Respondent, Fargo, while acting under the color of law of the State of

Montana, at Rimrock Mall, Billings, Montana if they did not consent to the illegal wiretapping of their telephone, join the conspiracy of illegal wiretapping, and be homosexualized as a method of recruitment.

Upon arrival in Minneapolis, Mn., the Atraqchis discovered another set of illegal wiretapping which was instituted against them. Accordingly, they were located, harassed, their conversations were seized and disseminated; and they were prevented from obtaining any employment in the State of Minnesota.

The Atraqchis immediately filed a federal civil suit in the U.S. District Court For The District of Minnesota for illegal wiretapping against Unknown Named Agents of the Federal Bureau of Investigation, et al., case Cv 3-90-225, which was dismissed for failure to state

a claim under Fed. R. Civ. P. Rule 12(b)(6) and was affirmed by the U.S. Court of Appeals For The Eighth Circuit, 938 F.2d 189 (1991); and cert. was denied, 112 S. Ct. 198 (1991).

Again the plaintiffs motioned the Court to vacate judgment pursuant to Fed. R. Civ. P. Rule 60(b)(6), the motion was denied for "no reason" justifying the relief, was affirmed by the U.S. Court of Appeals For The Eighth Circuit, 959 F.2d 740 (1992), and cert. was denied, 91-245 (1992). (See Appendix D for citations).

Due to excessive illegal wiretapping and electronical surveillance, harassment, intimidation, isolation, and threats of entrapment, the Petitioners moved to the District of Columbia only to discover another set of illegal wiretapping had been

instituted against them.

They immediately filed a federal civil suit in the U.S. District Court for the District of Columbia and now is pending before this Court.

As a result of the excessive illegal wiretapping and the electronical surveillance stated herein:

1. The Petitioner has lost his job as Insurance Agent for the last nine years.

2. Their reputation has been ruined.

3. Petitioners have been prevented from any employment for the last nine years.

4. Prevented from any and all association with daughters, families, and friends for the last six years.

5. Prevented from operating their shopping center located at 647-655 Main,

Billings, Montana for the last six years and from operating their newly built pizza house located at 655 Main, Billings, Montana for the last twelve years.

6. Deprived from living in their home located in Billings, Montana for the last three years.

7. Deprived of competent medical advice and treatment.

8. Deprived of legal competent counsel to advise them.

9. And are in imminent danger of losing their real estate property for taxes on May 31, 1993.

The Petitioners have sustained grave injuries as a result of the defendants' acts and will continue to in the future unless the acts of the defendants are refrained.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: This Petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and the Opinion of the United States Court of Appeals For The District of Columbia has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

This Court has implicitly held that a pro se complaint is not automatically frivolous unless it lacks an arguable factual or legal basis, that a sua sponte dismissal in advance of service and when the Court does not have benefit of the Respondents' answer is premature and deprives the Petitioners of the benefit of amendment, and that dis-

missal under Rule 12(b)(6) should not be equated with the more lenient standard of frivolousness. In Neitzke v. Williams, 490 U.S. 319, 328 (1989) it was held:

> "A complaint filed in forma pauperis is not automatically frivolous within the meaning of 1915(d) because it fails to state a claim under Rule 12(b)(6). The two standards were devised to serve distinctive goals and have separate functions. Under Rule 12(b)(6)'s failure to state a claim standard - which is designed to streamline litigation by dispensing with needless discovery and fact-finding - a court may dismiss a claim based on a dispositive issue of law without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one, whereas under 1915(d)'s frivolousness standard - which is intended to discourage baseless lawsuits - dismissal is proper only if the legal theory or the factual contentions lack an arguable basis. The considerable common ground between the two standards does not mean that one invariably encompasses the other, since,

> where a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion flows from 1915(d)'s role of replicating the function of screening out inarguable claims from arguably meritorious ones played out in the realm of paid cases by financial considerations. Moreover, it accords with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the in forma pauperis statute of assuring equality of consideration for all litigants. To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) - notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on - which are not provided when complaints are dismissed sua sponte under 1915(d). Pp. 324-331."

It is further stated that close questions of federal law, including claims filed pursuant to 42 U.S.C. 1983, have on a number of occasions arisen on

motions to dismiss for failure to state a claim, and have been substantial enough to warrant this Court's granting review, under its certiorari jurisdiction, to settle them. See, e.g., Estelle v. Gamble, 429 U.S. 97 (1976); McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976); Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971); Jones v. Alfred Mayer Co., 392 U.S. 409 (1968). It can barely be said that the substantial legal claims raised in these cases were so defective that they should never have been brought at the start. To term these claims frivolous is to distort measurably the meaning of frivolousness both in common and legal parlance. Indeed, this Court has recently reviewed the dismissal under Rule 12(b)(6) of a complaint based on 42 U.S.C. 1983 and

found by a 9-to-0 vote that it had, in fact, stated a cognizable claim - a strong example that a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit. See Brower v. Inyo County, 489 U.S. 593 (1989).

The Supreme Court unanimously has declared that pro se in forma pauperis complaint must be read with tolerance: Dismissal is impermissible unless the Court can say "with assurance that under the allegations of the pro se complaint, which the Court holds to less stringent standards than normal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-21 (1972), quoting Conley v.

Gibson, 355 U.S. 41, 45-46 (1957) reaffirmed in Estelle, 429 U.S. at 106.

Furthermore, this Court has stated in Hagans v. Lavine, 415 U.S. 528, 534-543 (1974), a similar case on the point, that the District Court had jurisdiction under 28 U.S.C. 1343(3)(4) to hear the substantial constitutional and statutory claims and held:

"1) within accepted substantiality doctrine, the complaint alleged a constitutional claim sufficient to confer jurisdiction on the District Court.

2) given a constitutional question over which it had jurisdiction, the District Court also had jurisdiction over the statutory claim which was to be decided first and could be decided by single district judge, and

3) state law claims pendent to federal constitutional claims are generally to be adjudicated, particularly where they may be dispositive and their decision would avoid adjudication of federal constitu-

tional questions."

Furthermore, this Court held in Hagans that the issue of equal protection was neither frivolous nor so insubstantial as to be beyond the District Court's jurisdiction; and the cause of action alleged was not so patently without merit as to justify a dismissal for want of jurisdiction. See Bell v. Hood, 327 U.S. 678, 682-683 (1946).

The United States Court of Appeals for the District of Columbia in Crisafi v. Holland, 655 F.2d 1305, 1307-08 (D.C. Cir. 1981), a similar case on the point, which was dismissed as frivolous before service of process held that the District Court did not state on what basis it found Crisafi's complaint frivolous or malicious and did not supply a statement of reasons under

Section 1915(d).

The D.C. Circuit presented in the opinion of Crisafi a guide for district court adjudication to secure the just and effective processing of similar cases filed in forma pauperis.

Moreover, the D.C. Circuit decided that in determining whether a specific complaint is frivolous or malicious under Section 1915(d), the threshold issue for the trial court is an assessment of the substance of the claim presented and "if there is a factual and legal basis . . . for the asserted wrong, however inartfully pleaded." quoting Watson v. Ault, 525 F.2d 886, 892 (5th Cir. 1976).

The D.C. Circuit found inter-alia that Crisafi's complaint was not subject to dismissal simply because plaintiff is litigous, that number of com-

plaints poor person files does not alone justify peremptory dismissal, and that in each instance subject of person's claim is appropriate measure.

Moreover, it was held in Crisafi that a complaint must indicate facts in support of its conclusions; however, the D.C. Circuit relied on the Federal Judical Center, Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts 60 (January 1980) which stated, "If the defect in the complaint is reparable, the Court should issue an order to show cause, permitting the plaintiff to respond and to amend . . . In borderline cases, the court should not dismiss, but should let the case proceed and rule on a subsequent motion to dismiss if one is presented."

Finally, the D.C. Circuit found

when applying the standard presented in Haines v. Kerner, supra to Crisafi's complaint that it did not appear "beyond doubt that Crisafi can prove no set of facts in support of his claim which would entitle him to relief."

In the Petitioners' case the D.C. Circuit did not apply the same standard presented in Haines v. Kerner, supra or the guideline which was set as an example to be followed in Crisafi.

Because the D.C. Circuit departed from the accepted and usual course of judicial proceedings set out by the U.S. Supreme Court and from their own guideline which was instituted and applied in Crisafi, this case merits review by this Court.

Question 2

Whether a Motion For Automatic Substitution, FRAP 43(a,c) is susceptible to dismissal as moot when it is a procedural device and does not govern the question of mootness, and the Appellees did not respond; and the Appellants were not given the opportunity to charge the Parties and amend their complaint?

Federal Rule of Appellate Procedure 43(c)(1) provides:

> "When a public officer is a party to an appeal or other proceeding in the court of appeals in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party. . . .

This rule contemplates the automatic substitution of successors to

public officers sued in their official capacity. Cf. Bracco v. Lackner, 462 F. Supp. 436, 441 n.2 (N.D. Cal. 1978); Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982).

Thus, to the extent that Petitioners' suit sought relief from Yellowstone County Sheriff in his official capacity and from the U.S. Attorney General as indispensable party, the Petitioners' motion substituting Sheriff Maxwell as defendant and Hon. Janet Reno, U.S. Attorney General, as indispensable party was proper.

Although substitution may be proper under Fed. R. App. Pro. 43(c), Petitioners point out that substitution is merely a procedural device that does not govern the question of mootness. See 7A C. Wright & A. Miller, Fed. Prac. & Pro. 1960, at 682-83 (1972).

See generally Ciudadanos Unidos de San Juan v. Hidalgo County Grand Jury Commissioners, 622 F.2d 807, 820-22 & n. 26 (5th Cir. 1980).

Moreover, the U.S. Supreme Court in Spomer v. Littleton, 414 U.S. 514, (1974), a similar case on the point held:

> "that where charges against original defendant were personal to him and plaintiffs had never charged his successor with anything did not presently seek to enjoin him from doing anything, it was necessary that case be remanded to Court of Appeals for determination, in the first instance, of whether dispute was moot and whether plaintiffs would want to, and should be permitted to, amend their complaint to include claims for relief against the successor; and that existence of a live controversy with the successor turned on charges pressed by plaintiffs, and was not established by statement of successor's counsel that successor would not change policies alleged to have been exercised by his predecessor."

There has been no response to the Motion by the adverse Parties, and the Petitioners were not given the opportunity, so far, to amend their complaint and to include claims for relief against successors.

Thus, in dismissing the Motion as moot, the D.C. Circuit has departed from the accepted and usual course of judicial proceedings set out by the Supreme Court in Spomer v. Littleton, supra; therefore, this case merits review by this Court.

CONCLUSION

For the reasons stated, the writ of certiorari should be granted and the judgment of the Court of Appeals for the District of Columbia Circuit reversed.

RELIEF

The Petitioners are, respectfully,

requesting this honorable Court to grant them the appointment of legal counsel to assist them with the remainder of this action, but to be paid by the Petitioners and to allow the Petitioners to correct the misnomer of the Yellowstone County Attorney Dennis Paxinos and Montana Department of Revenue in lieu of Harold Hanser and the State of Montana.

DATED this 30th day of March, 1993.

Respectfully submitted,

Irene S. Atraqchi

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-5238 September Term, 1992

Irene S. Atraqchi, et al., 92cv01446

Appellants

v.

Unknown Named Agents of the Federal Bureau of Investigation, et al.

FILED DEC 28, 1992 RON GARVIN, Clerk, U.S. Court of Appeals

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Siberman, Buckley and Henderson Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for a published

opinion. See D.C. Cir. Rule 14(c). It is

ORDERED AND ADJUDGED that the district court order filed June 24, 1992 dismissing appellants' complaint for lack of subject matter jurisdiction be affirmed. The complaint contains factual allegations that are so implausible as to be "fantastic or delusional." Neitzke v. Williams, 490 U.S. 319, 328 (1989). On this basis alone, dismissal of the complaint for lack of subject matter jurisdiction was appropriate. Id. at 327 n. 6 ("A patently insubstantial complaint may be dismissed... for want of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)"). Cf. Crisafi v. Holland, 655 F.2d 1305, 1307-08 (D.C. Cir. 1981) ("A court may dismiss as frivolous complaints . . . postulating events and circumstances of a wholly fanciful kind").

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

Bills of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IRENE ATRAQCHI and MIKE ATRAQCHI, Plaintiffs, v. UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.	)	Civil Action No. 92-1446

ORDER

Plaintiffs have filed a complaint against numerous persons, most of whom live in other states, as well against governments and government officials -- federal, state, and local -- alleging that information obtained in unlawful wiretaps was improperly disseminated and subsequently used to plaintiffs' detriment. Virtually all of the events in the complaint are dated 1988 or earlier. The prolix, somewhat rambling complaint fails to state any bases for invoking this Court's subject matter jurisdiction and must be dismissed without prejudice.

In summary, plaintiffs, husband and wife, allege a series of events occurring during the 1980s and earlier, in Montana, involving wiretaps and other intrusions on plaintiffs' privacy. Over the years since 1958, plaintiffs became embroiled in a progressive controversy between themselves, the husband's employer, an ex-minister of the Methodist church and the church itself, a Montana county sheriff, a Montana county attorney, a Montana telephone company, a Montana college professor, various unknown FBI agents, a financial group, an insurance company, the then Attorney General, and 1000 John and Jane Does. Claims against many if not all of these persons, which range from slander to rape of plaintiffs' daughter in an effort to convert plaintiffs to Christianity and/or homosexuality, are currently pending in the Ninth Circuit.

The occasion for a general renewal of these claims is as follows. Plaintiffs now allege that, as a result of, and in an effort to escape, the earlier actions of the Montana and other out-of-state defendants, which occurred in the western part of the country, plaintiffs eventually came to Washington, where they have been living since June 4, 1992, looking for work. Shortly after their arrival here, plaintiffs assert that an unknown person threateningly told them to return to Montana, and that at least one of their conversations was subsequently taped while they were in Providence Hospital on June 14, 1992 and later relayed to the wife by an unknown woman in a parking lot.

As a preliminary matter, all the earlier claims are timebarred under the federal wire tap statute on which plaintiffs rely. See 18 U.S.C. 2520(e). Accord-

ingly, only the most recent events, which are not factually connected with the prior conspiracy or earlier events, need by analyzed.

As to the federal defendants, there is no indication that any Federal Tort Claim Act remedies have been pursued, and the claims against the agencies and the individuals in their official capacities thus cannot be separately maintained in this action. Moreover, because the allegations relating to the recent events are insufficiently precise both in identifying the individuals as government agents and in stating the factual bases for the claims, the requirement of heightened pleading is lacking against any of the government officials, and plaintiffs therefore cannot maintain the individual claims. Nor has any claim been stated under Federal Rule of Civil Procedure 12(b)(6). The recent events have not

been linked by any specific allegations to the Attorney General or the Director of the FBI, both of which offices have been filled by different people since the 1980s. The suggestion of conspiracy is too vague to support a cause of action in this regard because none of the officials allegedly involved in the current events have been tied to the prior events or people.

As to the key out-of-state defendants, there is no indication that the Court has subject matter jurisdiction over the local governmental units or that there has been any waiver of sovereign immunity or that there is any pattern or practice in those governmental units sufficient to sustain a claim against them. As to the remaining out-of-state defendants, there is no suggestion that they are in any way related to the recent events that occurred in Washington.

Finally, plaintiffs allege in paragraph XV of the complaint that jurisdiction is based on diversity of citizenship, but there is not complete diversity in this matter. On that ground alone, the Court must dismiss the complaint. In addition, having dismissed any possible federal cause of action, the Court may, and hereby does, dismiss any pendent state claims, there being no independent bases of subject matter jurisdiction for those claims.

For the above reasons, the complaint is hereby dismissed without prejudice for failure to state a claim on which relief can be granted by this Court.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

June 24, 1992.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-5238 September Term, 1992

CV 92-1446

Irene S. Atraqchi, et al.,

Appellants

v.

Unknown Named Agents of the Federal Bureau of Investigation, et al.

FILED MAR 17, 1993
Ron Garvin
Clerk, U.S. Court of Appeals

BEFORE: Silberman, Buckley and Henderson, Circuit Judges

O R D E R

Upon consideration of appellants' petition for rehearing, filed January 8, 1993, it is

ORDERED, by the Court, that the petition is denied. It is

FURTHER ORDERED, by the Court, that the motion for substitution of

parties is dismissed as moot.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY:

Robert A. Bonner
Deputy Clerk

Ninth Circuit citations:

1. Atraqchi, et al. v. Four Unknown Named Agents of the Federal Bureau of Investigation, Cv-84-256-BLG (D. Mont. 1984)

2. Atraqchi, et al. v. Four Unknown Named Agents of the Federal Bureau of Investigation, 791 F.2d 167 (9th Cir. 1986)

3. Atraqchi, et al. v. Four Unknown Named Agents of the Federal Bureau of Investigation, 479 U.S. 884 (1986)

4. Atraqchi, et al. v. Four Unknown Named Agents of the Federal Bureau of Investigation, Cv-84-256-BLG (Reopening)(September, 1987)

5. Atraqchi, et al. v. Four Unknown Named Agents of the Federal Bureau of Investigation, 878 F.2d 1438 (9th Cir. 1989)

Eighth Circuit citations:

1. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation, Cv-3-90-225 (D. Minn 1990)

2. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation, 938 F.2d 189 (8th Cir. 1991)

3. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
112 S. Ct. 198 (1991)

4. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
Cv-3-90-225 (D. Minn-Nov. 21, 1991)

5. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
959 F.2d 740 (8th Cir. 1992)

6. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
91-254 (May, 1992)

District of Columbia Circuit citations:

1. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
Cv-92-1446 (D. Columbia 1992)

2. Atraqchi, et al. v. Unknown Named Agents of the Federal Bureau of Investigation,
92-5238 (DC Cir. 1993)